

PROCEEDINGS IN CHAMBERS

On

Paper #796, to wit: The Application of the
Defense for an order of the Tribunal granting
leave to withdraw from the files Court Exh.
No. 2361, book entitled "Government in Japan",
by Charles Fahs,

and

Request by G-2 to interview certain accused.

26 March 1947

Cmdr. Cole

Wednesday, 26 March 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Paper No. 796, to-wit: The Application
of the Defense for an order of the Tri-
bunal granting leave to withdraw from the
files Court Exhibit No. 2361 (for identi-
fication only), to-wit: a book entitled,
"Government in Japan," by Charles Fahs,

and

Request by G-2 to interview certain accused.

Before:

HONORABLE SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Lorraine Yelden
Court Reporter, IMTTE

Appearances:

FOR THE PROSECUTION SECTION:

MR. SOLIS HORWITZ.

FOR THE DEFENSE SECTION:

MR. MICHAEL LEVIN, appearing for
MR. G.F. BLEWETT, Counsel for the
Accused, TOJO, Hideki.

MR. ROGER F. COLE, Counsel for the
Accused MUTO, Akira.

INTFE:

FOR THE OFFICE OF THE GENERAL SECRETARY,

MR. CHARLES A. WANTZ, Clerk of the Court.

MR. PAUL M. LYNCH, Deputy Clerk of the Court.

The proceeding was begun at 0930.

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THE PRESIDENT: This is case No. 796, an application on behalf of defense for leave to withdraw a book, "Government in Japan," by Charles Fahs, being exhibit No. 2361. The head librarian of the Ernie Pyle Library has requested its return at once. Are there any objections?

MR. LEVIN: I appear for Mr. Blewett, who is necessarily absent.

THE PRESIDENT: There is no objection by the defense?

MR. HORWITZ: No objection for the prosecution.

THE PRESIDENT: I recollect that book; some use was made of it. I think some exhibits were used.

MR. LEVIN: Some excerpt, I believe.

THE PRESIDENT: Some excerpt. Application granted.

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THE PRESIDENT: Mr. Cole.

MR. COLE: Mr. President, I have an unscheduled matter I would like to mention, one that has caused some concern and a little indignation among the defense counsel, particularly those who are closely involved with it.

I think it was a week ago today that Lieutenant Hargadon, our administrative assistant, told me that a Major was out here at the War Ministry from G-2, Intelligence, asking permission to interview several of the accused. After discussing it with Mr. DeMartino he narrowed his list down to three: General MUTO, General TOJO, and Admiral OKA.

I found the Major in Mr. Blewett's office and he showed me a radiogram from Washington in which G-2 had been requested to interview some of the accused and also to get documentary evidence to help Secretary of War Patterson in the preparation of a radio address on military preparation and military budget. They wanted to get statements from some of the important military leaders of 1941 to the effect that one of the reasons why Japan had attacked the United States at that time was because they thought the United States was poorly prepared and couldn't support an army in the field.

I told him that I was opposed to his talking with General MUTO, first, because I was certain that General MUTO would make no such statement, and, secondly, because the Tribunal on many occasions had criticized publicity which tended to indicate what course the testimony might take and I thought such

answers as they gave might fall in that category.

THE PRESIDENT: Before you go any further, I do not believe that a man of Mr. Patterson's caliber would be a party to such a request.

MR. COLE: I had some doubt, sir, because the radiogram itself was unsigned.

MR. HORWITZ: I think all he asked for, he asked G-2 for information and that is about all.

MR. COLE: But it did ask for comments of these former military leaders themselves. I refused permission as far as General MUTO was concerned. The next day they called Lieutenant Hargadon again and pressed it, and I refused again. The others did likewise. Friday I was called into General MUTO and he told me that a Major had come to Sugamo Thursday night and had called out those three separately and had interviewed General MUTO. For his part he said he didn't want to talk because his attorney had advised him not to and they made the remark to him that since the information they would like was outside the scope of the trial it was perfectly harmless.

I would like to give your Honor an example or two of the questions that were asked.

THE PRESIDENT: It couldn't be outside the scope of the trial.

MR. COLE: No. One question they asked was whether Japan before the war was being supplied by Germany. Another was whether Japan intended to seize the Netherlands East Indies and thus use it as a base to attack British possessions, and such flagrant violations of the assurance General MUTO had been given.

It made me indignant, certainly, when I found it out and the others as well. We thought it ought to be called to the Tribunal's attention for our own protection and possibly such help as the Tribunal could give in preventing a repetition.

THE PRESIDENT: Certainly the prisoners are in the custody of the Tribunal and of the Supreme Commander, and we could not possibly be a party to such extraction of information from the accused.

MR. COLE: We had thought, besides mentioning it to your Honor, that we would get in touch with the Chief of Staff possibly and do what we could directly. Mr. OKA requested me to bring it up as soon as we could for our own protection so that if anything came of it you would know how the defense counsel stood on it.

THE PRESIDENT: I am amazed to know that such

a thing has happened, and the impropriety of it is obvious. I stress again I do not believe Mr. Patterson is implicated in any way.

MR. COLE: I have tried to quote as nearly as I could.

THE PRESIDENT: If you care to you may cable what I have said to Washington, just as I have said it. I think you had better go straight to Washington with this through the Supreme Commander.

MR. COLE: Yes, sir. We will take it up officially through the defense group then.

THE PRESIDENT: Yes.

MR. COLE: Thank you.

(Whereupon, at 0945, the proceeding was concluded.)

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